

Bauer, Jaime (DEQ)

From: Jennifer H. Plude [jplude@cityofchesapeake.net]
Sent: Tuesday, March 31, 2015 2:56 PM
To: Paylor, David (DEQ)
Cc: Bauer, Jaime (DEQ); Davenport, Melanie (DEQ); Woodruff, Melinda (DEQ); DMullen@mcguirewoods.com; Barbara Brumbaugh; McDowell, Angela (DEQ)
Subject: Draft MS4 Permit: Owner Comment (Email 1 of 3)
Attachments: Draft MS4 Permit Comments to DEQ 3-31-15.pdf; 2015-03-25_Index.pdf; 2015-03-25_Ltr. HRPDC to J. Bauer.pdf

Mr. Paylor,

Attached you will find the City of Chesapeake's comments on the initial draft of its MS4 Permit. Please note that the attachments referenced and incorporated by reference in the City of Chesapeake's comments are set out in the attached index and will be sent in this and subsequent emails (due to file size). If you do not receive a total of 3 emails, please let me know. A hardcopy of this letter and a data CD of its attachments will also be mailed to your attention today.

Jennifer H. Plude
Office of the City Attorney
306 Cedar Road
Chesapeake, Virginia 23322
Telephone: (757) 382-6939
Facsimile: (757) 382-8749

NOTICE: This message and its attachments are confidential and may be protected by the attorney/client privilege and attorney work product privilege. This message and its attachments are subject to exceptions under the Virginia Freedom of Information Act, Va. Code Sections 2.2-3705.1(2) and (3). If you have received this message in error, please notify the sender immediately by e-mail and delete and destroy this message and its attachments.

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Subject: Draft MS4 Permit: Owner Comment (Email 2 of 3)
Attachments: Attachment_1.pdf; Attachment_3.pdf

Mr. Paylor,

Attached you will find Attachments 1 and 3 of the HRPDC letter referenced and incorporated by reference in the City of Chesapeake's comments.

Jennifer H. Plude
Office of the City Attorney
306 Cedar Road
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Cc: Bauer, Jaime (DEQ); Davenport, Melanie (DEQ); Woodruff, Melinda (DEQ); DMullen@mcguirewoods.com; McDowell, Angela (DEQ); Barbara Brumbaugh
Subject: Draft MS4 Permit: Owner Comment (Email 3 of 3)
Attachments: Attachment_2.pdf

Mr. Paylor,

Attached you will find Attachment 2 of the HRPDC letter referenced and incorporated by reference in the City of Chesapeake's comments.

Jennifer H. Plude
Office of the City Attorney
306 Cedar Road
Chesapeake, Virginia 23322
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Facsimile: (757) 382-8749

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March 31, 2015

Mr. David Paylor, Director, Virginia DEQ
629 E. Main Street
Richmond, VA 23219

Re: City of Chesapeake Draft MS4 Permit Comments

Dear Mr. Paylor:

The City of Chesapeake appreciates the extension in the deadline to provide comments on our initial draft Municipal Separate Storm Sewer Permit (MS4), Virginia Pollution Discharge Elimination System (VPDES) Permit (draft permit). To provide some background and context for our comments, the City applied for reissuance of the Permit to the Department of Conservation and Recreation (DCR) in 2005, and then negotiated a draft permit in good faith from 2006 through 2009. Through no fault of the City, the process was halted in 2009. Since that time, the program was transferred back to DEQ in 2013. The City was not contacted about a draft permit until October 2014. The City was asked to provide a few pieces of information regarding our current program, which the City provided. There was very little communication with DEQ before the City received its draft permit on January 26, 2015. DEQ requested that the City provide comments no later than February 27, 2015. The City then requested an extension to March 31, 2015 in order to attempt to provide meaningful comments. While this has not been enough time to fully assess the feasibility of the draft permit requirements and the financial and staffing impacts to the City's current programs, City representatives participated in developing regional comments through its Hampton Roads Planning District Commission (HRPDC). The City fully supports the HRPDC's comments, which have already been submitted in a letter dated March 24, 2015, and that letter and its attachments are incorporated fully herein by reference (HRPDC letter).

Some of the City's overarching concerns with the permit, as more fully discussed below, are that the costs of permit implementation and requirements are anticipated to be extremely burdensome. An initial estimate of costs to be incurred by the City over the permit cycle if implemented as drafted is unknown, but \$36 million is the estimated cost of required Chesapeake Bay TMDL pollutant reductions alone over three permit cycles; and \$13 million is the estimated cost of complete inspection of the City's storm sewer system within the five year permit term, which is just one other single proposed permit requirement and would exhaust a significant amount of the annual stormwater utility fee revenue collected by the City as stated in paragraph 5.b below. While the City supports improving water quality, the draft permit terms should allow the City to allocate scarce resources to the most effective and cost efficient projects and programs. Instead, the draft permit proposes administrative burdens and quantitative measures that are not adequately justified (or founded on flawed data and/or modeling that is subject to impending updates), provide little flexibility, and may not even achieve water quality benefits.

One observation of general applicability is that the number and magnitude of the new requirements in this draft MS4 permit are staggering. Reporting requirements alone will necessitate additional staff due to the high level of detailed reporting required in this draft permit. While the City maintains various databases to track its program implementation, these are internal systems which sometimes contain sensitive personal information (of both residents and employees) that cannot be shared publicly. Reporting requirements contained in the draft permit will require City staff to either create duplicate databases for state reporting, or to scrub its internal information so that it can be shared publicly – both are arduous tasks. The City also questions whether DEQ has the manpower to review the volumes of information being requested. As an alternative, the City suggests that it continue to provide summary information to DEQ with detailed information to be made available upon request. The City specifically notes below multiple areas within the permit where the permit requirements do not align with the reporting requirement (i.e. reporting is due prior to the requirement due date). City representatives would be happy to meet with DEQ to review these areas in the permit and refine them.

While the City understands that DEQ must balance competing priorities while under pressure to issue a permit with clear and objective performance and/or compliance requirements, it would be fiscally irresponsible of the City not to question the necessity of many of the requirements contained within this draft permit. Just as the state must prioritize finite resources, the City must do the same. The cost to implement the Chesapeake Bay TMDL requirements alone will be staggering, not to mention other local TMDLs. The Fact Sheet which accompanies this permit does little to explain the monumental administrative requirements contained in this draft permit and the significant level of effort over the current permit requirements. The local development of the TMDL Action Plans and MS4 Program Plan should drive local prioritization and selection of projects with water quality benefits for implementation based on cost-benefit analysis and other factors of local significance, not arbitrary benchmarks for the number of retrofits in the permit term nor mandated offsets (without regard to cost, efficacy, or other considerations) for recent and new private construction not subject to the new stormwater technical requirements. The City understands and supports incrementally increasing its level of effort to improve water quality, and the City is committed to strengthening its MS4 programs in areas where there are benefits to be gained, however, the funding that will be required to implement the administrative requirements in this draft permit will not result in water quality benefits and in fact will severely limit our ability to fund water quality projects. As such, the City will continue to encourage and support state and federal funding programs, such as the Stormwater Local Assistance Fund, for implementation of water quality projects. Permit flexibility is also an important consideration as stated in the Fact Sheet at Item 21: “[DEQ] recognizes that, in most instances, the permittee is best suited to determine the specificity, design and targeting of the comprehensive stormwater management programs to address priorities in a cost effective manner.”

In addition to those comments and attachments included in the HRPDC letter, the City also submits the following additional comments and objections. Regardless of specific mention of some comments included in the HRPDC letter and not others below, the City adopts the comments of the HRPDC letter (included but not limited to objections to the data and modelling used for BMP estimates and past BMP implementation assumptions) in its entirety. The City also reserves further comments on those requirements discussed below that are described as unclear or for which clarification or further discussion is requested.

1. Part I., Authorized Discharges

While the draft permit references the “MS4 Program Plan,” it does not allow time to develop this plan in accordance with new permit requirements. The City reiterates (as stated in Section VI.B of the HRPDC letter) that the City should be allowed a minimum of twelve months to develop a comprehensive MS4 Program Plan which meets the requirements of the permit.

2. Part I.B.1. and 2., Stormwater Management – Planning; Retrofitting; and Roadways

- a. The language in this section conflicts with the planning process required by the Total Maximum Daily Load (TMDL) Action Plan process. The City requests that part I.B.1. be removed and that the TMDL Action Plans guide the planning process for stormwater and retrofit projects during the term of the permit as stated in Section V of the HRPDC letter. Likewise, the requirement in Part I.B.2. for seven retrofit projects is arbitrary and has no basis as stated in Section V of the HRPDC letter. Projects needed to meet TMDL obligations will be determined through the TMDL Action Planning process. Projects selected for implementation will be based on priorities set by the City and may include considerations in addition to water quality benefits.
- b. As stated in Section V.D of the HRPDC letter, a minimum of 24 months would be needed to develop the list of permittee maintained roads, streets, and parking lots that includes the street name, the miles of roadway not treated by BMPs, and miles of roadway treated with BMPs. Given the size of the City (351 square miles), and the fact that almost all of the roads are maintained by the City, this is a very large task. Furthermore, the purpose of this requirement is unclear, not explained in the Fact Sheet, and does not align with the TMDL Action Plan process. If the basis for this requirement is adequately articulated by DEQ, the City requests that this requirement be modified to allow a minimum of 24 months for the City to review and document BMP service areas in an effort to quantify treated and untreated impervious and pervious areas, without regard to or identification of whether an impervious area is a building, road, or parking lot.

3. Part I.B.2., Stormwater Management – Pesticide and Fertilizer Management

- a. The City requests that DEQ, in conjunction with DCR, provide additional urban nutrient management training and certification opportunities in Hampton Roads. Technical assistance is also requested to meet these permit requirements until appropriate City staff and contractors have had an opportunity to complete state training programs.
- b. As stated in Section VI.E of the HRPDC letter, the City requests that the requirement to report acres managed under Integrated Pest Management Plans be removed from the permit. This requirement is not explained in the Fact Sheet, and Pest Management Plans utilized by our Mosquito Control Department are regulated through other avenues.

4. Part I.B.2., Stormwater Management - Illicit Discharges; Spill Prevention and Response; Industrial and High Risk Runoff

- a. The requirement to inspect a minimum number of linear feet of sanitary sewer is not appropriate in the draft permit as sanitary sewer assessments consistent with applicable provisions of state and federal law are regulated by other means as stated more fully in Section VI.F of the HRPDC letter. This requirement should be removed from the permit.
- b. As stated in Section VI.G of the HRPDC letter, the requirement for a floatables monitoring program should be removed from the permit. This program is not explained by the Fact Sheet, nor is it supported by any other requirements that the City is aware of.
- c. The City objects to the requirement that the City develop a parallel program to DEQ's Industrial Inspection and Compliance Auditing Program. As written, the draft permit essentially requires the City to duplicate the DEQ's Clean Water Act programs as they pertain to industrial facilities. VPDES facilities are permitted and regulated by DEQ, which is where this authority lies. In addition, as stated in Section IV.A of the HRPDC letter, facilities not required to obtain DEQ permits (e.g. major automotive facilities) should not be identified by DEQ as "commercial establishments that contribute significant pollutant loadings to the MS4" which require inspection and oversight by the City. The word "significant" is imprecise, subjective, and unenforceable. In addition, the City should be allowed to determine the types of industrial facilities to inspect using its professional judgment and consistent with facts and circumstances giving rise to the authority of the City to perform such inspections (e.g. Dillon Rule; state and federal constitutional protections for unreasonable search and seizure). By DEQ's own admission (Fact Sheet, Item 19), "This permit does not regulate discharge categories that are excluded from obtaining permit coverage at 9VAC 25-870-300 and from federal Clean Water Act (CWA) regulation. Any discharges of pollutant and/or acreage associated with excluded discharge categories is considered unregulated by this permit whether it discharges through the MS4 or directly to State waters."
- d. This section of the permit contains unreasonable and administratively burdensome requirements to provide unnecessarily high levels of detail, i.e. lists of spills, illicit discharges, and outfalls inspected along with a high level of detail pertaining to each spill, investigation, and inspection. In past Annual Reports, the City has provided summary information for DEQ, and made additional details available upon request. Reportable spills and illicit discharges are always reported to DEQ in accordance with state requirements. These new reporting requirements will require that the City maintain duplicate data tracking systems, or extract large amounts of data from existing databases and remove sensitive information before providing it to DEQ. This is a significant effort and the purpose is unclear. The City requests, for further reasons stated in the HRPDC letter at Section VI.H, that the City continue reporting summary data only to DEQ, with detailed information available upon request.

5. Stormwater Management - Stormwater Infrastructure Management

- a. The terms “stormwater management facility” (SWM) and “best management practice” (BMP) appear to be used interchangeably within the draft permit. Please clarify the requirement to inspect annually all SWM facilities owned or operated by the permittee. Based on the City’s understanding of the requirement, the City assumes that the intent is to inspect annually all stormwater management “treatment” facilities, however, the City owns well over 60,000 stormwater structures and it is critical that the City fully understand this requirement in order to provide meaningful comments. The Fact Sheet does not provide an adequate explanation.
- b. The requirement to inspect 15% of the storm sewer system annually and 100% of the system during the 5 year permit term is not logistically or financially feasible, and there is no basis for this requirement within the Fact Sheet or elsewhere. To illustrate the objection raised in the HRPDC letter at Section VI.I, the City manages over 1200 miles of storm sewer pipe and over 2700 miles of ditches in addition to over 60,000 storm sewer structures of various types. Since this monumental task could not be accomplished using City resources alone, it would need to be done contractually at an estimated cost of \$13 million dollars over the five year permit cycle. Our annual budget from the stormwater utility fund is less than \$15 million dollars which funds the bulk of our program (staffing, equipment, capital projects, etc.). The City’s system varies widely in age and there is not a need to inspect 100% of the system every five years. This is a significant cost and effort with very little payback and the basis for the requirement is not adequately explained in the Fact Sheet. The City maintains a robust preventive closed circuit television (CCTV) inspection and maintenance program for its piping as well as a lead ditch inspection and maintenance program. The City also responds to customer service requests for areas that require attention. Inspection frequency should not be dictated by the permit, but should be left to the professional judgment of City staff who are familiar with the City’s assets and are the best qualified to determine the City’s needs and priorities.
- c. The City requests clarification of the term “outfall” and submits that mapping efforts should be limited to outfalls of a minimum size, such as 36” or greater to make the most cost effective use of resources.
- d. As stated in the HRPDC letter at Section VI.I, the requirements to report a high level of detail on the City’s Infrastructure Management Program are extremely administratively burdensome. The City requests that the reporting include summary information and that additional information be provided to DEQ upon request.

6. Part I.B.2., Stormwater Management - Public Education/Participation

- a. The City requests clarification and explanation on the requirement to promote and publicize methods for residential car washing that minimize water quality impacts. This activity is specifically exempt from regulation, therefore justification for this requirement is unclear.
- b. The City requests clarification on what is considered an “entity likely to have a significant stormwater impact.” The word “significant” is imprecise, subjective, and

unenforceable. The City and its regional partners should be allowed to determine the types of entities to target for education and outreach.

- c. The reporting requirements within this section are administratively burdensome. The City requests that the permit only require a summary report of educational activities with additional information available to DEQ upon request.

7. Part I.B.2., Stormwater Management – Training

The requirements for having programs to ensure that Plan Reviewers and Inspectors obtain appropriate Erosion and Sediment Control and Stormwater training and certifications are duplicative of existing requirements under the Virginia Stormwater Management Act and associated regulations. For further reasons stated in the HRPDC letter at Section VI.P, the City requests that these and other duplicative requirements be removed from the draft permit.

8. Part I.B.2., Stormwater Management – Water Quality Screening Programs

- a. The draft permit contains a fourfold increase in the number of dry weather screening sites. This number is arbitrary and should be reduced as stated in the HRPDC letter at Section VI.L. Furthermore, due to the natural geography in the City, it is extremely difficult to identify actual “dry” sites. High ground water levels, tidally influenced outfalls, and the flat topography ensure that the MS4 always contains water. During the City’s recent Environmental Protection Agency (EPA) re-inspection (January 2015) it was suggested by EPA staff that the City may want to pursue screening programs which may be more useful given the natural conditions in this area. The City requests a further opportunity to discuss some of these possible alternative options to dry weather screening with DEQ.
- b. The purpose of the “wet weather screening program” is unclear. The City anticipates that additional targeted monitoring and screening will become part of the City’s TMDL Action Plans. The City requests that this requirement be removed in light of TMDL Action Plans likely to replace this effort and for the reasons stated in the HRPDC letter at Section VI.M. Additionally, please refer to comments in Section 4 above and the HRPDC letter at Section IV.A pertaining to industrial and high risk runoff.
- c. Reporting requirements, as drafted, do not align with the schedule outlined in the permit in this section.

9. Part I.B.2., Stormwater Management – Infrastructure Coordination

- a. Please provide clarification on the need for the City to report on acreage that is “unaccounted for” by either the City or VDOT within the City’s TMDL Action Plans. The Fact Sheet does not provide a basis for this requirement.
- b. Since this section requires the City to share information and coordinate extensively with VDOT, the City requires written assurance from DEQ that reciprocal requirements have been placed on VDOT.

10. Part I.C.2., Monitoring Requirements

- a. Please refer to the detailed comments on the Hampton Roads Regional Monitoring Program in the HRPDC letter at Sections III and VI.M.
- b. The requirement to provide “the required information for SWM facilities existing prior to the effective date of this permit” within 36 months is unnecessary as the City has responded to DEQ’s 2015 Historical Data Clean-Up Request For Applications and will be providing this information in 2015.
- c. Please provide clarification on the requirement to provide an annual summary of programs to ensure maintenance of private stormwater management facilities as well as those maintained by the City. Since the City’s procedures will be detailed within its MS4 Program Plan, the purpose of this requirement is unclear.

11. Part I.D., TMDL Action Plan and Implementation

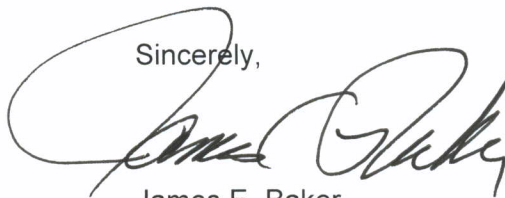
- a. Please refer to the detailed comments on this section in the HRPDC letter at Sections II and VI.O.
- b. The City objects to the requirement to offset loads from private development that was constructed in accordance with stormwater technical criteria which were in effect at the time of approval. Even if there was some authority of retroactive applicability, the requirement is not factually supported or justified, project approvals were made without the benefit of anticipating this future requirement, and the exercise of trying to identify the loads is extremely difficult and would require a re-review of all plans submitted between 2009 and 2014. All of this is unnecessary given that the City will be compiling comprehensive BMP data for our portion of the Chesapeake Bay Watershed. Additional detailed comments are provided in the HRPDC letter at Section II.C.
- c. The City objects to the requirement to offset loads from projects which qualify for “grandfathering” under the VSMP Regulations. The City has no way to identify which approved projects will ultimately go to construction until such time that a project owner applies for permits to construct. A determination of “grandfathered” status will not be made until that time. Additionally, the City should not be held accountable for private projects which are in compliance with state requirements. Additional detailed comments are provided in the HRPDC letter at Section II.C.
- d. The City is in receipt of the revised Chesapeake Bay TMDL Action Plan Guidance and is in process of reviewing the document. Regardless of the final guidance document, the City encourages DEQ to continue to allow flexibility with TMDL compliance and to allow for quick approval for new and cost effective methods and technologies to be used for pollutant reductions.
- e. The Fact Sheet and draft permit refer to an inaccurate delineation of the City’s Chesapeake Bay Watershed, and thus inaccurate wasteload allocations for the Bay TMDL. The City submitted corrected data to DCR as part of the Phase II Watershed Implementation Plan process, however, the City did not receive a response from DCR or DEQ and it does not appear that this information has been corrected. The City will resubmit DEQ accurate watershed information upon request.

12. Fact Sheet

The City objects to the inclusion of a site inspection report of the City issued by the EPA dated March 2011 (Site Inspection Report) which is referenced in the Fact Sheet at paragraph 5 and incorporated by reference as Attachment 3. The City disputed and continues to dispute many findings of the Site Inspection Report, and the City and the EPA entered into a Consent Order and Final Order on or about March 30, 2012, in which the City neither admitted nor denied specific factual allegations and conclusions arising from the Site Inspection Report. Reference to and inclusion of the Site Inspection Report should be removed from the Fact Sheet and its attachments.

In summary, the permit as currently drafted is not ready to be released for public comment, and the City does not consent for it to be published at this time. The City hopes to work with DEQ to refine the draft permit to ensure that the City's finite resources can be directed toward implementation of programs and projects with tangible water quality benefits. The City appreciates the opportunity to meet with DEQ representatives on April 13, 2015 at the Hampton Roads Planning District Commission to further discuss these comments. If you have questions or require additional information, please contact Eric Martin, Public Works Director at (757) 382-6380 or Barbara Brumbaugh, Environmental Quality Coordinator at (757) 382-6919 or bbrumba@cityofchesapeake.net.

Sincerely,

A handwritten signature in black ink, appearing to read "James E. Baker", written over a large, stylized, looping flourish.

James E. Baker
City Manager

Attachment (HRPDC letter and its attachments)

CC: Melanie Davenport, DEQ Water Division Director
Jaime Bauer, DEQ, Environmental Specialist II
Melinda Woodruff, DEQ, Environmental Specialist II
Dale Mullen, McGuire Woods LLP

Phase I MS4 Permits for the Cities of Chesapeake, Hampton, Newport News, Norfolk, Portsmouth, and Virginia Beach

Index

1. Letter
2. Attachment 1
 - a. 8/15/11 letter to Joan Salvati, DCR, from John Carlock, HRPDC; emails among N. Hill, J. Salvati, and S. Smith of DCR, and J. Davis-Martin, Chesapeake Bay WIP II project manager
 - b. 12/19/12 letter to D. Dowling, DCR, from T. Sheppard, HRPDC
 - c. 3/22/13 letter to D. Dowling, DCR, from T. Sheppard, HRPDC
 - d. 11/6/14 letter to M. Davenport, DEQ, from D. Mullen, McGuire Woods
3. Attachment 2
 - a. State Water Control Board Enforcement Action – Special Order by Consent Issued to Hampton Roads Sanitation District, cities of Chesapeake, Hampton, Newport News, Norfolk, Poquoson, Portsmouth, Suffolk, Virginia Beach, & Williamsburg; counties of Gloucester, Isle of Wight, & York; James City Service Authority; & town of Smithfield
 - b. Attachment 1 to Special Order by Consent – Regional Technical Standards
 - c. Memorandum of Agreement – Regional Guidelines
4. Attachment 3

State Water Control Board Enforcement Action – Order by Consent Issued to cities of Chesapeake, Hampton, Newport News, Poquoson, Portsmouth, Suffolk, Virginia Beach, & Williamsburg; counties of Gloucester, Isle of Wight, & York; James City Service Authority; & Town of Smithfield

**MEMBER
JURISDICTIONS**

March 24, 2015

CHESAPEAKE

Jaime L. Bauer
Environmental Specialist II
Department of Environmental Quality
Commonwealth of Virginia
P.O. Box 1105
Richmond, VA 23218

FRANKLIN

GLOUCESTER

HAMPTON

RE: Amend and Reissue the Draft Authorization to Discharge under the Virginia Stormwater Management Program and the Virginia Stormwater Management Act

ISLE OF WIGHT

Dear Ms. Bauer:

JAMES CITY

NEWPORT NEWS

NORFOLK

POQUOSON

Thank you for extending the deadline to submit comments from February 27, 2015 to March 31, 2015. The following comments are made to the draft Authorization to Discharge under the Virginia Stormwater Management Program and the Virginia Stormwater Management Act ("Permits") and are submitted by the Hampton Roads Planning District Commission ("HRPDC") on behalf of the HRPDC's Phase I MS4 member jurisdictions ("MS4 Localities" or "Localities").¹

PORTSMOUTH

The Localities may submit their own comments as well and may choose to append these comments to their own and incorporate them by reference. We appreciate the opportunity to discuss comments with DEQ representatives on Monday, April 13, 2015, from 9:00 a.m. to 12:00 p.m. in the HRPDC Boardroom at 723 Woodlake Drive, Chesapeake, Virginia 23320.

SMITHFIELD

SOUTHAMPTON

I. Introduction

SUFFOLK

The MS4 Localities and HRPDC appreciate the Department of Environmental Quality's ("DEQ's") willingness to address many of our concerns with the draft Permits; however, some concerns remain in both the draft Permits and the draft Fact Sheets accompanying the Permits ("Fact Sheets").

SURRY

VIRGINIA BEACH

The MS4 Localities acknowledge that responsibility for this program has recently been transferred from the Department of Conservation and Recreation ("DCR") to DEQ. For this reason, it is important to note that HRPDC has already expressed concerns about the Bay TMDL provisions in the General Permit for Discharges of Stormwater from Small MS4s ("General Permit") and in the draft stages of the Phase I Permits. Such comments were

WILLIAMSBURG

YORK

¹ The large (Phase I) MS4 jurisdictions are the cities of Chesapeake, Hampton, Newport News, Norfolk, Portsmouth, and Virginia Beach.

made on those Permits in August 2011, December 2012, March 2013, and most recently in a meeting with DEQ on November 7, 2014. The prior comments are attached here and incorporated by reference (*see Attachment 1*). Many of the comments and concerns have remained consistent since the earliest communication on the topic.

II. Chesapeake Bay TMDL Action Planning

A. The baseline loading rates are inaccurate and their use in calculating baseline pollutant loads will require the MS4 Localities to achieve greater load reductions than necessary to reach their Bay TMDL target loads.

Although not fully explained in the Fact Sheet, we understand that the baseline loading rates in Section I.D. of the Permit were calculated using state-derived estimates of the types, numbers, and efficiencies of stormwater Best Management Practices ("BMPs") installed on the acreage of developed impervious and pervious land in each river basin as of June 30, 2008. These estimates were then used as inputs to the Chesapeake Bay Watershed Model to produce basin-wide 2009 edge of stream ("EOS") loading rates for each pollutant of concern (nitrogen, phosphorus, and total suspended solids). Neither DCR nor DEQ has provided a meaningful explanation of how it arrived at its BMP estimates. It is apparent that DCR's BMP estimates are inconsistent with Locality-documented BMP implementation data as of June 30, 2008. During the Phase II Watershed Implementation Plan ("WIP") process, the Localities found significant discrepancies between local and State BMP data and reported this information to DCR in February 2012, but DCR neither corrected its data nor responded to the Localities' findings.² DCR's failure to use updated BMP data prevented it from calculating accurate baseline loading rates and that problem remains to the present day.

B. The process of averaging flawed loading rates over the entire basin further discounts past BMP implementation by the MS4 Localities.

Baseline loading rates derived using BMP implementation data averaged over the entire James River basin fail to account for greater BMP implementation by localities that are subject to the Chesapeake Bay Preservation Act ("CBPA"), and therefore, over-estimate loading rates for these localities. As directed pursuant to the CBPA, the 38 Virginia localities in the tidal portion of the Chesapeake Bay Watershed (including 16 localities within the HRPDC) have been requiring developers to offset nutrient and sediment loads since 1990 by installing stormwater BMPs. The tidal localities receive only partial credit for the resulting lower loading rates because the basin-wide average BMP

² As an example, one locality in Hampton Roads contains 3,000 acres of developed land. According to DCR's 2009 Progress Run, BMPs in this locality treat only 300 acres. Locality ground-truthed data indicates, however, that BMPs treat three times as many acres for a total of 900 acres. In this example, the state estimates that approximately 1/10 of the area of the locality is treated by BMPs, when in actuality, closer to 1/3 of the acres in the locality have the benefit of BMP treatment.

implementation estimates used by DCR simply offset the higher loading rates of those localities in the non-tidal portion of the basin rather than giving full credit to the localities that actually achieved the reductions.

C. The MS4 Localities should not be required to offset loads from private development that was constructed in accordance with stormwater regulations.

The Localities object to the requirement to offset projects that were approved for impervious cover at greater than 16 percent without stormwater treatment requirements. CBPA localities had programs approved by DEQ/DCR that allowed more than 16 percent of impervious cover and should not be required to offset loads from private development that was in compliance with stormwater regulations in effect at the time of development. The State should not require Localities to retroactively subsidize private development.

The Permit also requires Localities to offset loads from all known land disturbing projects that qualify under the "grandfathering" provision in the Virginia Stormwater Management Program ("VSMP") regulations in Part I.B.2.a. This requirement is not appropriate for the following reasons:

1. If a project is "grandfathered," only portions of the project for which construction commenced within the first Permit cycle and one renewal cycle are grandfathered pursuant to 9 VAC 25-870-48. Therefore such status is only applicable for a given period of time. Localities cannot predict which projects will be constructed in the requisite timeframe.
2. Localities should not have to accept the additional financial burden of offsets when the decision to approve the projects did not factor in this requirement.
3. Some grandfathered projects will never be constructed and Localities should not have to provide offsets for these projects. A determination of grandfathered status would not be made until such time that a project owner indicates intent to begin construction by making application for required City permits. For various reasons many projects which are approved never continue through to construction. The Localities have no way to predict this in advance and thus cannot plan for this requirement.

D. DCR has failed to address earlier requests from HRPDC and the Localities to correct the same deficiencies in the baseline loading rates identified in these comments.

The HRPDC and the Localities alerted DCR (and now DEQ) to the above-described deficiencies on more than one occasion. Such comments were made

in August 2011, December 2012, March 2013, and most recently in a meeting with DEQ on November 7, 2014. See Attachment 1. DCR responded to a number of our questions related to the baseline loading rates, but neither the Localities nor the HRPDC ever received a reasoned explanation and justification for the decision to develop the baseline loading rates in Section I.D. of the Permit using the State basin-wide BMP data and the 2009 Progress Run.

Two of the more obvious examples of this are (i) DCR's failure to revise BMP implementation data when Localities provided updated data for DCR's Phase II WIP data call, and (ii) DCR's reliance on a directive from the Environmental Protection Agency ("EPA") to use the 2009 Progress Run to derive the baseline loading rates rather than exercising its own judgment and discretion to determine whether some other model run would produce more accurate loading rates.³

The Fact Sheets provided by DEQ do not provide a reasoned rationale and justification for using the baseline loading rates in Section I.D. of the Permit. Instead, the Fact Sheets do little more than repeat much of what is in the Permit. The Phase I and Phase II WIPs fail to provide a rationale and justification for the baseline loading rates, and instead, like the Permit, offer only an abbreviated and inadequate explanation of the basis for the rates.

Although courts accord considerable deference to an agency's exercise of its discretion, the agency must exercise that discretion in a way that is not arbitrary and capricious. In short, the agency must provide a reasoned rationale and justification for its action.⁴ It is not enough for an agency to simply identify the basis for its action as DEQ has done.

E. Use of the 2010 No Action Model Run would address the deficiencies in the baseline loading rates.

DEQ can correct the above-described deficiencies by modifying Section I.D. of the Permit to instruct Localities to calculate their baseline loads using loading rates from the 2010 No Action Model Run instead of the 2009 Progress Run (the 2010 No Action Model Run reflects pollutant loads without BMPs). Under this approach, Localities would also submit data on actual BMP implementation and the resulting pollutant load reductions from these BMPs and receive credit for these reductions beyond their calculated baseline loads. This approach would (i) use the most accurate BMP data in the development of loading rates, (ii) avoid the use of inaccurate basin-wide loading rates because locality-specific

³ See August 15, 2011, letter from John Carlock (HRPDC) to Joan Salvati (DCR) and August 31, 2011, email response from Noah Hill (DCR) to Jennifer Tribo (HRPDC), copies of which are in Attachment 1 to these comments.

⁴ See *Chem. Mfrs. Ass'n v. EPA*, 28 F.3d 1259, 1265-66 (D.C. Cir. 1994); *Va. Real Estate Comm'n v. Bias*, 226 Va. 264, 269, 308 S.E.2d 123, 125 (1983); *Env'tl. Defense Fund v. Va. State Water Control Bd.*, 15 Va. App. 271, 277-78, 422 S.E.2d 608, 611-12 (1992); *Johnston-Willis, Ltd. v. Kenley*, 6 Va. App. 231, 241-44, 369 S.E.2d 1, 19-24 (1988); *Atkinson v. Va. Alcoholic Beverage Control Comm'n*, 1 Va. App. 172, 176, 336 S.E.2d 527, 529-30 (1985).

information could be used to calculate more accurate locality-specific loading rates, and (iii) permit localities to obtain credit for all BMPs implemented within the locality up to the effective date of the Permit, which would result in more accurate pollutant load and load reduction calculations.

While we understand that EPA may have directed DCR to frame statewide strategies in terms of pounds of pollutants removed from the 2009 Progress Run to meet the statewide TMDL targets, we believe that DEQ should view this as a reporting requirement. DEQ could comply with EPA's request by requiring Localities to (i) calculate the number of total pounds of pollutants reduced by achieving a five percent reduction from the 2009 Progress Run, and (ii) then express that load reduction as a percent reduction from the 2010 No Action Model Run.

F. TMDL Action Plan and Implementation

In Part I.D.1.b.1., Localities suggest removing the word "approvable" and replacing it with "in accordance with the Chesapeake Bay TMDL Action Plan Guidance." Permittees cannot be subjected to non-compliance by requiring the submittal of "approvable" Action Plans. Permittees who make a good faith effort to submit complete and accurate Action Plans should not be deemed to be non-compliant because DEQ does not approve the Plan for reasons that were not reasonably foreseeable by the permittee when preparing its plan. Alternately, language could be added that permittees who fail to submit revised plans correcting deficiencies identified by DEQ may be deemed non-compliant with the Permit.

Based on the draft Bay TMDL Action Plan guidance, as BMPs are approved by the Bay Program they can also be used to comply with the Permit. It is important to Localities that this provision be included in the final Action Plan guidance.

We request that DEQ revise the Action Plan guidance so that the baseline loading rates reflect the 2010 No Action model run, as explained in Section II.E. of this comment letter. We ask that DEQ work diligently to provide the final Action Plan guidance as soon as possible but no later than the effective date of the Permit.

The Localities request a clear definition of "James River Basin." There are areas in Hampton Roads that do not drain to the James River Basin such as East Ocean View in Norfolk, the Lynnhaven River in Virginia Beach, Little Creek in both Norfolk and Virginia Beach, or the Poquoson in Newport News and Back River in Hampton and Newport News.

The Localities ask for clarification on the following sentence in Part I.D.2.a.: "Implementation of BMPs on unregulated lands provided the baseline reduction

is subtracted from the total reduction prior to application of the reduction towards meeting the required reductions.”

G. TMDL Annual Reporting Requirements

Part I.D.d.5.b. of the Permit should be deleted. Planning for the second Bay TMDL Action Plan should be included in the second Permit. It is not reasonable to plan the second Action Plan before the conditions of the second Permit are known. Additionally, the Localities will have to start planning approximately one year after completing their first Action Plan, prior to the actual implementation and lessons learned timeframe.

III. Monitoring Requirements

A. Regional Monitoring Program

The Localities appreciate DEQ's consideration of the Regional Monitoring Program under development, but the monitoring requirements in Part I.C.1. are not feasible. Monitoring sites were selected to quantify the loading rates for specific land uses in the Coastal Plain. The Monitoring Program was not designed to determine the effectiveness of upstream BMPs. The Study design attempted to avoid drainage areas with BMPs, but this was not feasible in all localities. Any effect of existing BMPs will become part of the baseline loading rate for that drainage area. Once baseline loads are calculated, then the effect of future BMPs may be characterized by the Monitoring Program. The portion of the sentence in Part I.C.1. that states, "... as well as determine the effectiveness of any upstream BMPs as follows" should be removed.

B. pH, Dissolved Oxygen, and E. coli

The requirement to collect pH, dissolved oxygen and E. coli data should be removed from the Permit. Part I.C.1.b. requires that samples be collected four times per year and analyzed for 11 pollutants. The Regional Monitoring Program was designed to collect automated samples during rain events. Flow, conductivity, temperature, and turbidity will be collected using a flow meter and water quality sonde. The samples collected by the automated sampler will be analyzed for total nitrogen, nitrate nitrogen, total phosphorus, orthophosphate, and total suspended solids. Dissolved oxygen and pH cannot be collected by the automated sampler due to holding times, and the water quality sondes that collect dissolved oxygen and pH cannot be used by the Monitoring Program because they must be constantly submerged. The regional monitoring stations were purposely selected to be out of the tidal range and therefore will likely go dry between rain events. Current EPA sampling protocols do not allow for E. coli data to be collected by automated sampler. Neither the draft Permit nor the Fact Sheet provides any justification for adding these parameters to the Regional Monitoring Program.

C. Reporting Requirements

The monitoring stations are currently being installed, and it may take the first year of the Permit to ensure that all stations are consistently operating properly and collecting usable data. The draft Permit requires that "each annual report shall include a summary of the monitoring results and analyses and an interpretation of that data with respect to long-term patterns/trends." This is beyond the purpose of the Monitoring Program. The Monitoring Program is intended to calculate the baseline loading rates for urban land uses in Hampton Roads. Monitoring data will be submitted in annual reports after Permit year two, but loading rates may not be calculated until the end of the Permit term due to the uncertainty in the magnitude and frequency of rainfall events.

IV. Industrial Inspection Program

A. Industrial and High Risk Runoff Facilities

Part I.B.2.g. requires the permittee to implement a program to identify and control pollutants in stormwater discharges to the MS4 from industrial and high risk runoff facilities (e.g., municipal landfills; other treatment, storage or disposal facilities for municipal waste; hazardous waste treatment, storage, disposal, and recovery facilities; facilities that may be subject to EPCRA Title III, Section 313); and any other industrial or commercial discharges the permittee determines are contributing a substantial pollutant loading to the MS4. This list of the types of facilities that are considered high risk for runoff, including landfills and waste management sites, does not coincide with the list presented in Part I.B.2.g. 1-6. For example, in Part I.B.2.g.6.b. of the Permit, automotive service shops are considered high risk runoff facilities, and they are not included in the introduction. The Permit should not specify the types of industrial facilities to inspect; the Localities should use best professional judgment to determine which facilities pose the greatest risk of polluting their MS4 systems.

B. State Responsibilities

The high risk facilities listed in Part I.B.2.g. are required to be permitted by DEQ. Discharge and effluent limits, housekeeping requirements, and other Permit conditions are set by DEQ in the applicable discharge permits. Requiring MS4 Localities to assume responsibility for facilities that are permitted by DEQ is not required by the stormwater management regulations, is arbitrary, and would divert finite local resources from those functions that are most efficiently and effectively performed by the Localities.

Part I.B.2.g.3. requires Permittees to review Discharge Monitoring Reports ("DMR") that are required to be submitted to DEQ by VPDES permits. Reviewing programs for permit compliance is the responsibility of DEQ. The Localities object to this requirement.

Further, the Localities have expressed concern that some might construe an exercise of authority under these clauses as unenforceable under the doctrine of the "Dillon Rule." The unprecedented shift of these responsibilities from the state to the localities could potentially expose the locality to public criticism, enforcement action, or litigation.

C. Prioritization of Industrial Inspections

Rather than inspect the outfalls of VPDES-permitted facilities, Localities should prioritize industrial inspections, perhaps focusing on those without VPDES permits. Localities should base their prioritized schedule on impairment or areas where there are concerns of pollutants, not those listed in this section. If the state finds these are high polluters, then they should be included in the Industrial Permit program.

V. Stormwater Management Projects through the TMDL Action Planning Process.

Part I.B.1. should be removed from the Permit. Localities will provide a list of stormwater projects 24 months after the Permit effective date as part of the Bay TMDL Action Plan.

The basis for requiring seven retrofit projects in Part I.B.2.b. is unclear and the number of projects is arbitrary. This requirement should be removed from the Permit. Localities are required to develop a Bay TMDL Action Plan and implement projects to reduce pollutant loads by five percent by the end of the Permit cycle. This metric is reasonable and makes a requirement for a specific number of projects irrelevant.

VI. Other Significant Issues

A. Effective Date of Permit and the Annual Reporting Period

Regardless of the Permit effective date, DEQ should ensure the annual reporting period coincides with the fiscal year (FY). If the effective date of the Permit does not coincide with the FY, then adjust the other Permit deadlines accordingly to allow for Locality budget cycles.

B. MS4 Program Plan Development

There is no timeframe provided for the development of the MS4 Program Plan in Part I.A.6. The Localities do not have active MS4 Program Plans; they are drafts developed as part of the Permit application process per DCR's request. The Localities require time to develop/update the MS4 Program Plan. We suggest allowing the Localities one year to develop/update the MS4 Program Plan. Additionally, the MS4 Program Plan and the Annual Reports should be recognized as different documents, all under this Permit. The MS4 Program

Plan spells out the roles, responsibilities, and procedures for implementing Permit requirements, while the Annual Report is a compilation of specific tasks that were accomplished in that specific Permit year.

C. Permit Organization

The third bullet listed in Part I.B.2. requires the permittee to report their strategy to address maintenance of stormwater management controls that are designed to treat runoff solely from the individual residential lot on which they are located. This reporting requirement would be more appropriate in Part I.B.h.2.a.i., which is the section regarding individual residential lot BMPs. The Localities suggest language closer to 9 VAC 25-870-112.B. As an example: "stormwater management facilities designed to treat stormwater runoff primarily from an individual residential lot on which they are located shall demonstrate to the satisfaction of the VSMP authority that future maintenance of such facilities will be addressed through an enforceable mechanism at the discretion of the VSMP authority."

D. Stormwater Management of Roadways

1. Part I.B.2.c.1. requires the Localities to develop an accurate list of permittee maintained roads, streets, and parking lots. The list is supposed to include the street name, the miles of roadway not treated by BMPs, and miles of roadway treated by BMPs, no later than 12 months after the effective date of the Permit. The Localities request that this deadline be extended to 24 months after the effective date of the Permit to allow localities to develop the list in coordination with the Action Plan.
2. Localities request removing the requirement to report the parking lot in Part I.B.2.c.1., as Locality databases are organized by road names.
3. Part I.B.2.c.2. requires the permittee to develop and implement written protocols for permittee maintained roads, equipment maintenance areas, and material storage areas to minimize pollutant discharges. Localities request removing both "equipment maintenance" and "material storage" areas from the list. The high priority City facilities, where equipment maintenance and material storage occurs, will be addressed as part of the SWPPPs that are required in Part I.B.2.i.2.

E. Pest Management

Part I.B.2.d.4. of the Permit requires the Permittee to report the number of acres that are managed under Integrated Pest Management Plans ("IPM"). Localities request that the requirement be removed. This requirement is not justified or explained in the Fact Sheet.

F. Sanitary Sewer Inspection

Part 1.B.2.e. requires inspection of the sanitary sewer system. These provisions are not appropriate for the Localities as the Localities have different legal obligations that still meet the requirements under applicable provisions of state and federal law. Specifically, since 2007, the Localities have been coordinating a regional approach to establish a consistent and uniform framework for identifying and implementing regional and individual system improvements to be undertaken pursuant to the Special Order by Consent ("Consent Order") and, under that Consent Order, developed Regional Technical Standards addressing the following: (1) data collection and flow monitoring, (2) Sewer System Evaluation Survey (SSES) planning, (3) sewer system condition assessment, (4) rehabilitation planning, (5) hydraulic modeling and performance assessment, (6) regional design guidelines, (7) regional operating guidelines, and (8) other technical requirements. *See Attachment 2.*

On December 9, 2014, a new Consent Order ("Amended Consent Order") terminated prior Consent Orders⁵ and implemented a sanitary sewer maintenance, operation, and management (MOM) program. The Hampton Roads Sanitation District ("HRSD") has assumed sole responsibility for all aspects of the Regional Wet Weather Management Plan ("RWWMP") and the HRSD MOM implementation in the Federal Consent Decree.⁶

The Localities are completing their required inspections and this requirement should be removed from the Permit.

G. Floatables

Part I.B.2.e.3. requires the development of a program to reduce the discharge of floatables. This requirement should be moved to Part I.B.2.j. Localities continue to address litter through public education and outreach campaigns. Localities should report on the effectiveness of the litter prevention programs instead of site surveys. Remove the fourth bullet in the Specific Reporting Requirements in Part I.B.2.e.3.

H. Illicit Discharges and Spills

1. The Permit requires in Part I.B.2.e. that each Annual Report includes a list of illicit discharges identified, the source, a description of follow-up activities and whether the illicit discharge has been eliminated. Localities instead request that a summary of illicit discharges be included in the Annual Report and the details of each be made available by request. If an illicit discharge exceeds the

⁵ *See Attachment 3*, p. 5, superseding and terminating Consent Orders issued by the State Water Control Board on September 26, 2007, December 17, 2001, and March 17, 2005.

⁶ *U.S. v. HRSD*, Civ. No. 2:09-cv-481, 2012 U.S. Dist. LEXIS 46984 (E.D.Va. Apr. 2, 2012).

reportable quantity threshold, DEQ is provided detailed information in the 5-day letters as required in Part II of the Permit.

2. Part I.B.e.1. requires the permittee to prohibit, on a case-by-case basis, any individual non-stormwater discharge otherwise allowed under the paragraph that is determined to be contributing significant amounts of pollutants to the MS4. The Localities request further explanation on what is considered a "significant amount" of pollutants. The word "significant" is imprecise, subjective, and unenforceable.
3. Part I.B.f. requires that a list of spills be included in each Annual Report. This section should only refer to reportable spills. It is unnecessary to report spills below the reporting threshold. Additionally, spills that occur at industrial sites and high priority municipal facilities will be tracked under SWPPP requirements.

I. Stormwater Infrastructure Management

1. Part I.B.h.d. requires the permittee to continue its storm sewer inspection program and inspect 100 percent of the MS4 system during the Permit term. Localities typically define the MS4 system as including all roadways, ditches, structures, curb lines, etc. It is not justified to inspect 100 percent of the system in a Permit term. Localities suggest they continue to evaluate the condition of their MS4 system using local knowledge and maintenance activities instead of inspecting 100 percent of the MS4 system during the Permit term. Localities prioritize their resources to the portions of the MS4 system that are in need of improvement. Localities will continue to document their maintenance plan as part of the MS4 Program Plan, with maintenance data such as the number of catch basins serviced, number of street-sweeping miles, and the number of city-owned BMPs maintained, etc.
2. Part I.B.2.h.1.e. requires permittees to dispose of wastes and wastewaters associated with stormwater system cleaning in accordance with local, state, and federal laws and regulations. Localities are required to comply with the law; it is unclear why this would be a Permit requirement.
3. In the specific reporting requirements of Part I.B.h.d., permittees are required to submit written inspection and maintenance procedures with the initial Annual Report. It is unclear why Localities would need to do this when these procedures will be submitted as part of the MS4 Program Plan.
4. In the specific reporting requirements of Part I.B.h.d, the permittee is required to report a list of activities including inspections, maintenance, and repair of stormwater infrastructure. Localities capture this data in multiple database systems; however, providing a comprehensive list of these tasks each year is an extensive administrative task. Localities suggest providing a summary of the

work completed and have the database systems on hand for inspection upon request.

J. City Facilities

Part I.B.2.i.1.d. should be revised to indicate that Localities will maintain municipal vehicles to minimize fluid leaks that discharge to the MS4 system. The municipal yards that house the vehicles will have SWPPP coverage.

K. Public Education/Participation

Part I.B.j.4. requires the permittee to post the MS4 Program Plan on their website no later than 30 days after the effective date of the Permit. As discussed in Section B above, there is no specified timeframe for the development of the MS4 Program Plan. Localities suggest stating that the Permittee post the MS4 Program Plan within 30 days of Plan approval.

L. Dry Weather Screening

Part I.B.2.l.1.a. of the Permit requires the permittee to screen a minimum of 100 of the City's MS4 outfalls each year. Localities suggest changing it to 25 of the City's MS4 structures, which would include catch basins and outfalls. Localities would use professional judgment to determine the areas of concern for screening. The last sentence of Part I.B.2.l.1.a. should be removed to allow for screening locations further upstream.

M. Wet Weather Screening

The wet weather screening program required in Part I.B.2.l.(2) should be removed from the Permit. This requirement is not defined or justified in the Permit or the Fact Sheet. The Regional Monitoring Program is a wet weather monitoring system designed to evaluate 10 to 15 storm events annually, with 40 to 60 samples collected from each station each year, depending on hydrologic conditions. Each locality is dedicating \$84,000/year to the Regional Monitoring Program. Additional wet weather screening is burdensome and not beneficial.

N. Structural and Source Controls Compliance Monitoring and Tracking

In the specific reporting requirements of Part I.B.2.h., the permittee is required to report historical BMPs in the fourth Annual Report. This requirement should be deleted. Localities will report the historic BMPs in each Annual Report and through DEQ's 2015 Historical Data Cleanup Request for Applications.

O. Other TMDL Action Plans

1. The Localities request that DEQ provide guidance on the Non-Bay TMDL Action Plans with a specific focus on bacteria and PCB TMDLs.
2. In Part I.D.2.b.4., the Localities suggest changing “facility of concern” to “high priority municipal facility” to be consistent with the rest of the Permit.
3. In Part I.D.2.g., BMPs that will be implemented in the “next permit term” should be included in the next Permit.
4. In Part I.D.2.g., the last sentence reads: “The permittee shall also evaluate and modify the estimated end date for achieving the applicable wasteload based on information acquired during the Permit cycle.” It is not feasible for Localities to estimate the date for achieving the wasteload for PCBs without additional guidance and identification of BMPs or actions that effectively eliminate PCBs. Additionally, Localities have no control over legacy PCB sources.

P. MS4 Program Implementation

The requirements of section I.B.2. are not proper permit terms as they only restate exiting law and regulation. By doing this in a VPDES permit, DEQ may subject Localities to EPA enforcement of state law and dual exposure to sanctions and penalties.

As an example, the EPA fined Norfolk for an alleged failure to obtain VSMP permits on City of Norfolk construction sites.⁷ Norfolk argued that this was not a violation of the current MS4 permit because the section under which the violation was noted required Norfolk to obtain VPDES Industrial Permits, not General Construction Permits. Norfolk argued that this would be a violation a state law and was, therefore, under the jurisdiction of DCR and not the EPA.

It is not necessary or justified to restate each provision of state law and regulation as a separately enforceable aspect of permit compliance. The Localities request revision to remove any sections that appear to separately require Localities to comply with state law or regulations associated with Virginia Erosion and Sediment Control Law § 62.1-44.15:51, *et seq.* of the Code of Virginia, Virginia Erosion and Sediment Control Regulations 9 VAC 25-840 *et seq.*, the Virginia Stormwater Management Act § 62.1-44.15:24 of the Code of Virginia, or Virginia Stormwater Management Program Regulations 9 VAC 25-870.

⁷ Circa 2010.

Ms. Jaime L. Bauer
March 25, 2015
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Q. Definitions

This section includes a reference to the Virginia Stormwater Management Act; however, the citation is for the regulations.

In conclusion, the purpose of planning district commissions, as set out in the Code of Virginia, § 15.2-4207 is "... to encourage and facilitate local government cooperation and state-local cooperation in addressing on a regional basis problems of greater than local significance." The Localities and the HRPDC appreciate your careful consideration of amendments to the Permits. It is our goal to work with DEQ to find reasonable solutions that will benefit all. Given the extent of the comments, the Localities do not support releasing the draft Permits for Public Notice at this time. We look forward to continued discussions on the presented concerns.

Sincerely,

Kenneth I. Wright
Chairman

JS/jc

Attachments

Copy: David Paylor, DEQ
Melanie Davenport, DEQ